



Internet Association

January 21, 2015

The Honorable Fred Upton
Chairman
House Energy & Commerce Committee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
House Energy & Commerce Committee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Chairman, Communications & Technology
Subcommittee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member, Communications &
Technology Subcommittee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton, Ranking Member Pallone, Chairman Walden, and Ranking Member Eshoo:

I write on behalf of the Internet Association to share our views on today's legislative hearing to discuss the proposed net neutrality legislation before your Committee. The Internet Association is the unified voice of the Internet economy, representing the interests of leading Internet companies¹ and their global community of users. The Internet Association is dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth, and empower users. As such, we are keenly aware of and interested in any net neutrality related public policy, regardless of its origins and legal foundation.

Since last May, when the Federal Communications Commission first requested public comments on its proposed open Internet rules, the Internet Association has taken a position that is results oriented. By this, we mean that our priority is for the adoption of robust and light touch open Internet rules that protect Internet freedom, foster innovation and economic growth, and empower users. The rules for which we specifically advocated are a ban on blocking, discrimination, and paid prioritization by both wired and wireless broadband Internet access providers. We also have expressed our concern – outside of the traditional last mile net neutrality debate – that these providers can use interconnection as a chokepoint to degrade consumer access and harm online services.

Many of the principles outlined by Chairman Upton and Chairman Walden are responsive to our concerns in key respects, and we are grateful for the leadership both the House and Senate have shown in crafting them, as well as the outreach to stakeholders throughout this process. With respect to the draft legislation, changes need to be made to ensure the outcomes match these principles so that an open Internet is fully protected. Although this list is not intended to be exhaustive, we have concerns about

¹ The Internet Association's members include Airbnb, Amazon.com, AOL, auction.com, eBay, Etsy, Expedia, Facebook, Gilt, Google, LinkedIn, Lyft, Monster Worldwide, Netflix, Practice Fusion, Rackspace, reddit, Salesforce.com, Sidecar, SurveyMonkey, TripAdvisor, Twitter, Yahoo!, Yelp, Uber and Zynga.



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certain key provisions in the discussion draft – namely discrimination, throttling, specialized services, consumer choice, and reasonable network management practices.

The bill as currently drafted does not expressly ban discrimination. Allowing discrimination unconnected to a payment creates the possibility of discrimination by vertically integrated Internet access providers. Similarly, the current prohibition on throttling in the discussion draft is ambiguous since it prohibits “selective” throttling only when the throttling is “based on source, destination, or content” of the traffic. This leaves open the possibility that an access provider could adopt a policy of generally throttling Internet traffic of a particular “type,” such as video traffic.

We also have concerns about the definitions of specialized services, consumer choice, and reasonable network management practices in the discussion draft. These terms as currently drafted could be used as loopholes to avoid the legislation’s obligations, leading to the unintended consequence of the exception swallowing the rule. Specialized services are defined expansively and are permitted save where “devised or promoted” to evade the open Internet rules, or where they impinge on the “meaningful availability” of broadband Internet access. Unfortunately, neither term is specifically defined. Similarly, we are concerned that the discussion draft’s consumer choice provision could be read to allow broadband Internet access providers to prioritize a service if consent is given through a provision buried in a dense and lengthy consumer service contract. Finally, the discussion draft could allow access providers to hide reasonable network management practices from transparency requirements, and thus, potentially hide discrimination under the guise of reasonable network management.

We look forward to working with the Committee on some key issues of concern for Internet companies – including the issues outlined above – as the Committee’s process advances. As we review Congressional open Internet proposals, we will continue to work with stakeholders – including the FCC – to produce enforceable rules. The path forward is not binary, and we have a responsibility to protect the free and open Internet for our members, as well as their community of users, by working with regulators, legislators, and stakeholders to achieve this end.

It is encouraging to see that support for net neutrality rules cross party lines. We must all work together to ensure that the Internet is free and open for users and innovators.

Respectfully,

Michael Beckerman
President & CEO
Internet Association